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No.

IN THE

Supreme Court of the United States

GAMBLERS SUPPLY MANAGEMENT CO. AND SODAK GAMING IOWA INC., A/K/A SODAK GAMING, INC.,

Petitioners

v.

BYRON P. CLEMENTS AND MARK W. CLEMENTS,

Respondents

On Petition For Writ Of Certiorari
To The Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Iowa Supreme Court improperly interfered with the uniformity of substantive federal maritime law by recognizing a cause of action for wrongful termination of a maritime employee who is fired for refusing to violate a safety statute in direct contradiction to both the Fourth and the Fifth United States Circuit Courts of Appeals which held:

1. That this exact cause of action does not exist in maritime law. Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826 (1991); Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990), cert. den., 499 U.S. 907, 111 S. Ct. 1108, 113 L.Ed.2d 218 (1991); Feemster v. BJ-Titan Services Co./Titan Services, Inc., 873 F.2d 91 (5th Cir. 1989), and

2. That state law on this issue is expressly preempted. Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826 (1991)

CORPORATE DISCLOSURE (RULE 29.6)

Sodak Gaming, Inc. is a wholly owned subsidiary of International Game Technology, which is a publicly traded company on the New York Stock Exchange.

Gamblers Supply Management Company has been merged into Isle of Capri Marquette, Inc., which is a wholly owned subsidiary of Isle of Capri Casinos, Inc. Isle of Capri Casinos, Inc. is a publicly traded company on the NASDAQ.

There are no other publicly traded corporations which own more than a ten percent share in either Sodak Gaming, Inc. or Gamblers Supply Management Company.

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of Appeals which held that this exact cause of action does not exist in maritime law and that state law on this issue is expressly preempted. Meaige v. Hartley Marine, 925 F.2d 700 (4th Cir. 1991); Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990); Feemster v. BJ-Titan, 873 F.2d 91 (5th Cir. 1989) . . . . . -9-

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Clements v. Gamblers Supply Co., et al, Case No. 48/98-1817, (Decision of the Iowa Supreme Court reversing the District Court, filed April 26, 2000; Petition for Rehearing denied May 15, 2000).

JURISDICTIONAL STATEMENT

Petitioners seek Certiorari from an Iowa Supreme Court decision filed on April 26, 2000. Petitioners timely filed a Petition for Rehearing on May 9, 2000. That Petition was denied by Order of the Iowa Supreme Court on May 15, 2000. This Petition for Writ of Certiorari is being filed within 90 days of that denial pursuant to United States Supreme Court Rule 13(1) and (3).

This United States Supreme Court has jurisdiction pursuant to U.S. Sup. Ct. Rule 10(b) because the Iowa Supreme Court, the Iowa court of last resort, has decided an important federal question that conflicts with the decisions of two Federal Courts of Appeals that have primary jurisdiction over

maritime matters, namely, Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826 (1991); Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990), cert. den., 499 U.S. 907, 111 S. Ct. 1108, 113 L.Ed.2d 218 (1991); Feemster v. BJ-Titan Services Co./Titan Services, Inc., 873 F.2d 91 (5th Cir. 1989).

CONSTITUTIONAL AND OTHER PROVISIONS

28 U.S.C. § 1333 Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

46 U.S.C. § 2114 Protection of seamen against discrimination

> (a) An owner, charterer, manager operator, agent, master, or individual in charge of a

vessel may not discharge or in any manner discriminate against a seaman because the seaman in good faith has reported or is about to report to the Coast Guard that the seaman believes that a violation of this subtitle, or a regulation issued under this subtitle, has occurred.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including —

(1) restraining violations of this section; and

(2) reinstatement to the seaman's former positions with back pay.

46 C.F.R. Subpart 15.515

Compliance with Certificate of Inspection (Reproduced in Appendix)

46 C.F.R. Subpart 91.45

Repairs and Alterations (Reproduced in Appendix)

46 C.F.R. Subpart 110.25

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46 U.S.C. § 3313

Compliance with Certificate of Inspection (Reproduced in Appendix)

STATEMENT OF THE CASE

Petitioners Sodak Gaming, Inc. and Gamblers Supply Management Company were the owners and operators of the Miss Marquette Riverboat Casino. Gamblers Supply Management Company was a wholly-owned subsidiary of Sodak Gaming, Inc.

Byron Clements was employed as a licensed Captain and Director of Marine Operations of the Miss Marquette from June 29, 1994, until he was terminated on October 2, 1995. As Director of Marine Operations, Byron Clements was responsible for assuring compliance with state, federal, and Coast Guard operational safety laws and regulations.

Mark Clements, son of Byron Clements, was employed as a licensed Captain and Manager of Marine Operations of the Miss Marquette from August 10, 1994, until his termination on June 28, 1996. Mark Clements was responsible for assuring compliance with certain operational safety laws and regulations aboard the Miss Marquette.

Byron and Mark Clements brought this cause of action for wrongful termination alleging that they were discharged for refusing to violate state, federal, and Coast Guard law. Specifically, they assert that they were discharged for refusing to violate: 46 U.S.C. § 3313, 46 U.S.C. § 8104(d), 46 C.F.R.

Subpart 91.45, 46 C.F.R. Subpart 110.25, and 46 C.F.R. Subpart 15.515.[1] These statutes and regulations all deal with federal maritime safety issues and are set forth in the Appendix to this Petition.

On July 31, 1998, Petitioners filed a motion for summary judgment in the Clayton County, Iowa District Court. The motion alleged that, although the state court had concurrent jurisdiction under the "savings to suitors" clause of 28 U.S.C. § 1333(1),[2] the state court was bound to apply the substantive maritime law which governed wrongful termination issues. The motion also alleged that because the Fourth and Fifth Circuit Courts of Appeals had addressed the exact issue in this case, and held that no cause of action existed for wrongful termination when a maritime employee is fired for refusing to violate a safety statute, summary judgment should be

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[1] It must be noted that while Petitioners heavily dispute these allegations, it must be assumed for the purposes of this appeal that Respondents' allegations are true.

[2] The "savings to suitors" clause, which has its roots in the Judiciary Act of 1875, provides primary jurisdiction over maritime cases to federal courts and provides concurrent jurisdiction to state courts as long as the state courts apply federal maritime law.

granted.

On September 22, 1998, the Clayton County District Court granted Petitioners' motion for summary judgment, acknowledging that federal maritime law was the controlling law. The Iowa District Court further held that federal maritime law did not recognize the Clements' cause of action, citing Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826 (1991); Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990), cert. den., 499 U.S. 907, 111 S. Ct. 1108, 113 L.Ed.2d 218 (1991); and Feemster v. BJ-Titan Services Co./Titan Services, Inc., 873 F.2d 91 (5th Cir. 1989).[3]

The Clements appealed this decision to the Iowa Supreme Court. On April 26, 2000, the Iowa Supreme Court reversed the district court.[4] In doing so, the Iowa Supreme Court held that even though maritime law applied, Iowa courts were not precluded from applying state law on wrongful termination and could ignore existing federal maritime law on the issue. In so holding, the Iowa Supreme Court held

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[3] The Iowa District Court's Order is reproduced in the Appendix to this Petition.

[4] The Iowa Supreme Court's Opinion is reproduced in the Appendix to this Petition.

that Feemster and Garrie were inapplicable, and held that Meaige was wrongly decided.

In essence, the Iowa Supreme Court refused to recognize the binding nature of three decisions from Federal Courts of Appeals directly on point, choosing instead to apply Iowa law that recognized the Clements' cause of action. As a result, the Iowa Supreme Court created a situation where maritime law is uniformly applied in almost every states to deny a cause of action like the one raised by the Clements. However, because the Clements were fired in Iowa, they are provided a cause of action by the Iowa courts.

Based on the Iowa Supreme Court's failure to recognize the binding nature of substantive federal maritime law, and the overreaching of its concurrent jurisdiction created in the "savings to suitors" clause, Petitioners now file this Petition for Writ of Certiorari. In doing so, Petitioners ask this U.S. Supreme Court to apply the existing federal law properly and restore uniformity to the substantive maritime law on wrongful termination. Where federal maritime courts have decided a substantive issue, state courts cannot create conflicting decisions.

REASONS FOR GRANTING WRIT

I. The Iowa Supreme Court improperly interfered with the uniformity of substantive federal maritime law by recognizing a cause of action for wrongful termination of two maritime employees who were fired for refusing to violate a safety statute in direct contradiction to both the Fourth and the Fifth Circuit United States Courts of Appeals which held that this exact cause of action does not exist in maritime law and that state law on this issue is expressly preempted. Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826 (1991); Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990), cert. den., 499 U.S. 907, 111 S. Ct. 1108, 113 L.Ed.2d 218 (1991); Feemster v. BJ-Titan Services Co./Titan Services, Inc., 873 F.2d 91 (5th Cir. 1989).

A. It is a fundamental principle of maritime law that states cannot contradict federal substantive maritime law by applying conflicting state law.

While the federal courts have been given the exclusive jurisdiction to hear maritime cases, state courts have been given concurrent jurisdiction to hear in personam maritime cases under the "savings to

suitors" clause. 28 U.S.C. § 1333. According to this concurrent jurisdiction, however, states are bound to apply substantive federal maritime law when sitting in maritime jurisdiction. Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 106 S. Ct. 2485, 91 L.Ed.2d 174 (1986).

In the present case, the Iowa Supreme Court erred when it acknowledged that maritime law governed this case, but then rendered its decision based on the Iowa state law of wrongful termination. In doing so, the Iowa Supreme Court ignored the consistent holdings of this United States Supreme Court over the last 120 years which have held that states cannot contradict substantive maritime law:

> "It must be remembered that the state courts have concurrent jurisdiction with the federal courts to try actions either under the Merchant Marine Act or in personam such as maintenance and cure. **The source of the governing law applied is in the national, not the state, governments. If by practice the state court were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny,**

> **federal rights**.... So here, in trying this case the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected. Whether it did so, raises a federal question reviewable here under 237(b) of the Judicial Code, 28 U.S.C. 344(b), 28 U.S.C.A. 344(b).14."

Garrett v. Moore-McCormack Co., 317 U.S. 239, 245-46, 63 S. Ct. 246, 87 L.Ed. 239 (1942)(emphasis added).

This principle that states may not expand or limit a party's rights or liabilities in contradiction to federal maritime law was best explained in Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 106 S. Ct. 2485, 91 L.Ed.2d 174 (1986):

> "Stated another way, the 'saving to suitors' clause allows state courts to entertain in personam maritime causes of action, but in such cases the extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-Erie' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards."

Id. at 222-23, citing Baxter, Choice of Law and the Federal System, 16 Stan.L.Rev. 1, 34 (1963)(referring to Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L.Ed. 1188 (1938))(emphasis added).

Offshore Logistics makes clear that, as in any Erie-type case, courts must determine whether the legal issue is substantive or procedural. If the issue is substantive, than the court is bound to apply the federal maritime law dealing with that issue.

In American Dredging Co. v. Miller, 510 U.S. 443, 114 S. Ct. 981, 127 L.Ed. 2d 285 (1994), this Court again addressed the question of whether the federal maritime law applied in lieu of state law. At issue in American Dredging was whether the maritime law of forum non conveniens preempted contrary state law on that issue. While it held that state law did apply, it did so because forum non conveniens was a procedural and not a substantive matter. American Dredging, 510 U.S. at 455, footnote 4. In addressing the scope of the state court's concurrent jurisdiction, this Court held:

> "In exercising in personam jurisdiction, however, a state court may 'adopt such remedies, and...attach to them such incidents, as it sees fit' **so long as it does not attempt to make changes in the 'substantive maritime law.'**

> Madruga v. Superior Court of California, 346 U.S. 556, 561 (1954) That proviso is violated when the state remedy '**works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.**' Southern Pacific Co. v. Jensen, 244 U.S. 205, 216 (1917)."

Id. at 446 (emphasis added). In further discussing the structure of federal maritime jurisdiction, this Court held:

> "One thing...is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character...."

American Dredging, 510 U.S. at 451, citing The

Lottawana, 88 U.S. 558, 575 (1875).

Both American Dredging and Offshore Logistics make clear that, while this U.S. Supreme Court permits state courts to supplement maritime law, it expressly prohibits doing so when a state court **"makes changes in the substantive maritime law," or interferes with the proper uniformity of that law.** American Dredging, 510 U.S. at 446 (emphasis added). This principle has continuously been enforced by this Court throughout the 20th Century. See e.g. Southern Pac. Co. v. Jensen, 244 U.S. 205, 37 Sup. Ct. 524, 61 L.Ed. 1086 (1917)(declaring state workers' compensation statutes invalid because their policies modified or displaced essential features of maritime law); Union Fish Co. v. Erickson, 248 U.S. 308, 39 Sup. Ct. 112, 63 L.Ed. 261 (1919)(state statute held invalid because it attempted to modify the remedial law of the admiralty courts)[5]; Kossick v. United Fruit Co., 365 U.S. 731, 742, 81 S.Ct. 886, 8 L.Ed.2d 56 (1961)(federal maritime rule validating oral contracts precluded application of state statute of frauds); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409, 74 S.Ct. 202, 98 L.Ed. 143 (1953)(maritime rule of comparative negligence barred application of state comparative negligence rule); Garrett v. Moore-

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[5] As cited by this Court in Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 124-25, 44 S.Ct. 274, 68 L.Ed. 582 (1924).

McCormack Co., 317 U.S. 239, 63 S. Ct. 246, 87 L.Ed. 239 (1942)(maritime rule allocating burden of proof displaced conflicting state rule).[6]

A concurring opinion from this U.S. Supreme Court has even indicated that maritime interest in uniformity applies directly to all maritime employment issues:

> "Unlike the land-based worker, the seaman's employment and all of the rights and restrictions flowing therefrom, are determined by federal statutory and admiralty law, not state law...
>
> ....
>
> ...The consistent and traditional control by federal law of every phase of maritime employment relationships and contracts refutes the proposition that [respondent's] contacts with Texas justify injecting state law into federal maritime affairs."

Oil Workers v. Mobil Oil Corp., 426 U.S. 407, 421-22, 96 S.Ct. 2140, 48 L.Ed.2d 736 (1976)(J. Powell,

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[6] As cited by this Court in Yamaha Motor Corp. v. Calhoun, 516 U.S. 199, 116 S.Ct. 619, 133 L.Ed. 578 (1996).

concurring), quoting Oil Workers v. Mobil Oil Corp., 504 F.2d 272, 284-286 (5th Cir. 1974)(J. Ainsworth, dissenting) (footnotes omitted).

Because the Iowa Supreme Court reached a decision in direct contradiction to three substantive maritime decisions from the Fourth and Fifth Circuit Courts of Appeals on the issue of wrongful termination, it has improperly interfered with the uniformity of maritime law. In addition, by recognizing a cause of action that was previously not available under maritime law, it has attempted to make changes to the existing substantive law. This has created conflicting maritime principles that must be addressed by this Court.

As a final matter, it should be noted that substantive maritime law consists not only of maritime statutes enacted by Congress but also maritime law as created by Federal Courts of Appeals:

> "[I]n the absence of some controlling statute, the general maritime law, **as accepted by the Federal courts**, constitutes part of our national law, applicable to matters within the admiralty and maritime jurisdiction."

Southern Pacific Co. v. Jensen, 244 U.S. 205, 215, 37 S.Ct. 524, 61 L.Ed. 1086 (1917)(emphasis added);

see Pope v. Talbot, Inc. v. Hawn, 346 U.S. 406, 410, 74 S.Ct. 202, 98 L.Ed.2d 736 (1953)(holding that "a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress **or interpretive decisions of this Court**.")(emphasis added); see also, J.B. Effenson Co. v. Three Bays Corp., 238 F.2d 611, 615 (5th Cir. 1956)(holding that substantive maritime law consists of "that which the Congress has enacted or the federal courts, sitting in admiralty or in the exercise of their maritime jurisdiction, have declared would apply."). Therefore, substantive maritime law is comprised as much by federal maritime court decisions, as it is comprised of federal maritime statutes enacted by Congress.

Based on the substantial authority cited above, it is clearly a fundamental principle of maritime law, as acknowledged by this U.S. Supreme Court's long history of maritime decisions, that uniformity among maritime courts must be preserved. Failure to do so is clear error.

B. Maritime courts and the U.S. Congress have already addressed the issue of wrongful termination when a maritime employee has been fired for refusing to violate a safety statute and held that such a cause of action exists only in very limited circumstances.

1. No cause of action exists for wrongful termination in maritime law under the facts of this case.

There is a body of federal maritime case law directly on point which holds that there is no cause of action for wrongful termination in violation of public policy when a maritime employee has allegedly been fired for refusing to violate a federal maritime safety statute.

First, in Feemster v. BJ-Titan Services Co./Titan Services, Inc., 873 F.2d 91 (5th Cir. 1989), a tugboat captain brought a wrongful termination action against his former employer claiming that he was fired for refusing to violate 46 U.S.C. § 8104(h)(federal safety statute restricting tugboats operated by only one captain to twelve hours of operation in any twenty-four hour period). The captain asserted that, although he was an at-will

employee and could be discharged for any reason, a public policy exception existed that prevented him from being discharged for refusing to perform an unlawful act. Id. at 92.

In discussing the public policy exceptions to termination of at-will employees, the Fifth Circuit in Feemster held:

> [W]e believe it is significant that **Congress provided no private right of action for retaliatory discharge.** The general purpose of this legislation is to promote maritime safety, **but not with employees acting as private enforcers and as private attorneys general; the agent of enforcement is the Coast Guard.**
>
> * * *
>
> If [the captain] had filed such a complaint and had been fired for doing so, he certainly would have a stronger argument that his discharge contravened public policy.

Id. at 93-94 (emphasis added). The Court then held that no cause of action exists for wrongful termination when a maritime employee has been fired for refusing

to violate a safety statute.[7]

The holding in Feemster was reiterated and further expanded two years later by the Fourth Circuit Court of Appeals in Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826, 115 L.Ed.2d 996 (1991). In Meaige, a seaman was again fired for refusing to violate a federal maritime safety statute. In that case, the Fourth Circuit affirmed the rule that no private right of action exists under maritime law for wrongful discharge. Id. at 702 (adopting the analysis from Feemster). The court also upheld the general principle that a seaman is an at-will employee who may be discharged for any reason.

The most notable thing about the Fourth Circuit's decision in Meaige is that it expressly denied the maritime employee's attempt to bring a cause of action **under West Virginia state law of wrongful**

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[7] In holding that no cause of action existed, the Fifth Circuit expressly limited its prior holding in Smith v. Atlas Off-Shore Boat Service, Inc., 653 F.2d 1057 (5th Cir. 1981) which recognized a cause of action for wrongful termination when a seaman has been fired for filing a personal injury action. In relying on Smith, the Iowa Supreme Court failed to recognize that Fifth Circuit expressly refused to expand Smith in Feemster to cover these facts. (Appendix, page A8).

termination. Id. The Fourth Circuit Court stated that although state law might recognize a claim for wrongful termination, **admiralty courts do not look to state law when doing so would undermine the uniformity of federal law.** Id. at 702-03. The Fourth Circuit Court held that because there was "a body of federal maritime jurisprudence relating to wrongful discharge," reliance on the West Virginia state law would "undermine uniformity in federal admiralty law." Id. at 703. In doing so, the Fourth Circuit acknowledged the very important maritime law principle that:

> "Uniformity of application throughout the nation is a central purpose and feature of this exclusive jurisdiction [of maritime law]."

Id. at 702, citing The Lottawanna, 88 U.S. 558, 575, 22 L.E.d. 654, 1996 A.M.C. 2372 (1874).

A third and final case which adopted the principle that there is no cause of action for a maritime employee fired for refusing to violate a safety statute is Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990), cert. den., 499 U.S. 907, 111 S. Ct. 1108, 113 L.Ed.2d 218 (1991). In that case, the maritime employee attempted to bring a cause of action for wrongful termination under 46 U.S.C. § 2114, the "whistleblower" statute. This

statute states:

> "An owner, charterer, managing operator, agent, master, or individual in charge of a vessel may not discharge or in any manner discriminate against a seaman because the seaman in good faith has reported or is about to report to the Coast Guard that the seaman believes that a violation of this subtitle, or a regulation issued under this subtitle, has occurred."

46 U.S.C. § 2114(a).

In Garrie, the maritime employee alleged that he was discharged for calling the United States Coast Guard to inquire about compliance with a safety statute (also 46 U.S.C. § 8104(h)). Id. at 809. Because the employee did not actually notify the Coast Guard of the alleged violation, the seaman asked the court to expand 46 U.S.C. § 2114 to include causes of action for those employees who only make inquiries to the Coast Guard about safety standards, but do not file formal reports. Id.

In refusing to expand section 2114, the Fifth Circuit held that the statute narrowly applied to protect only those who had filed formal complaints. In addition, the Fifth Circuit reiterated its holding from

Feemster that there exists **"no general cause of action for wrongful discharge under maritime law."** Garrie, 912 F.2d at 813 (emphasis added). It held that the employee's remedy was to contact the Coast Guard to correct the violation, not to sue for wrongful discharge. Id.

These three federal maritime cases are directly on point as they are factually identical to this case. Here, the Clements are two river boat captains who assert that they were discharged because they refused to violate certain Coast Guard safety regulations. In Feemster, the statute that the seaman refused to violate was 46 U.S.C. § 8104(h), dealing with the number of permissible hours of operation. In this case, Byron and Mark Clements allege that they were discharged for refusing to violate:

(1) 46 U.S.C. § 8104(d) which states that a vessel may not be operated without having the required Certificate of Inspection.

(2) 46 CFR Subpart 15.515 which requires maintaining a certain number of crew members on the vessel at all times.

(3) 46 CFR Ch. 1, Subpart 110.25 and 91.45 which requires obtaining Coast Guard approval for any modification to

the riverboat. These statutes establish the requirements for making repairs and alterations to a vessel after obtaining Coast Guard approval.

(4) 46 U.S.C. § 3313 which requires a vessel to always be in compliance with the terms of its Certificate of Inspection.

These safety provisions dealing with manning requirements, modification requirements, and compliance with the Certificate of Inspection are procedures that insure the safe operation of the Miss Marquette Riverboat. As in Feemster, the proper course of action for someone who witnesses a violation of one of these statutes is to report the violation to the Coast Guard. The statutes were not created so that seamen could act as private attorney generals or enforcers of maritime law.

Based on these cases, it is undeniable that federal maritime courts have addressed the Clements' cause of action and held that it is not recognized under maritime law. As such, Meaige, Garrie, and Feemster represent substantive federal maritime law directly on point. The Fourth and Fifth Circuits have made clear that there is no cause of action for wrongful termination when a maritime employee is fired for refusing to violate a safety statute **even if there is state law (as in Meaige)**

which may provide such relief.

2. 42 U.S.C. § 2114 recognizes causes of action for wrongful termination only where a maritime employee has contacted, or is about to contact, the Coast Guard to report safety violations.

In reversing the district court, the Iowa Supreme Court failed to recognize that the Clements already had a potential cause of action under 46 U.S.C. § 2114, but they had failed to comply with the applicable federal maritime statute. In doing so, the Iowa Supreme Court essentially held that a maritime employee does not need to comply with the requirements of § 2114 if the employee's termination occurs in the State of Iowa.

According to 46 U.S.C. § 2114, maritime employees have a cause of action for wrongful termination when they are dismissed after they have reported, or are about to report, safety violations to the U.S. Coast Guard. If the employee fails to report the violation to the Coast Guard, they do not have a claim for wrongful termination. This condition precedent requiring the employee to contact the Coast Guard is based on sound public policy because it encourages maritime employees to come forward

and report safety violations as soon as they are discovered so that any potential hazards can be remedied by the Coast Guard immediately.

The recourse created in 46 U.S.C. § 2114 is not available in this case, however, because the Clements admitted, in undisputed terms, that they never contacted the Coast Guard to report any alleged violations. Knowing that they have not met the terms of the statute, their cause of action is simply an attempt **to create a new exception to section 2114.** Because the Clements never reported any of the alleged violations to the Coast Guard, they are barred from bringing their cause of action under 46 U.S.C. § 2114.

By reversing the district court, the Iowa Supreme Court has created a new exception to the maritime employee's at-will status. That exception states that maritime employees have no cause of action for wrongful termination if they are fired for refusing to violate a safety statute, unless they first contact the Coast Guard **or their termination occurs in the State of Iowa.** Surely maritime uniformity is essential enough to require that states such as Iowa follow maritime principles, in spite of state law to the contrary.

II. CONCLUSION

Based on the current federal maritime case law that occupies the field of wrongful termination in maritime cases, the Iowa Supreme Court has erred in failing to apply federal maritime case law.

First, the Iowa Supreme Court improperly interfered with the uniformity of federal maritime law when it refused to follow the Fourth Circuit Court of Appeals decision in Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826, 115 L.Ed.2d 996 (1991).

In Meaige, the Fourth Circuit Court of Appeals addressed whether state law of wrongful termination in violation of public policy is expressly preempted by the federal maritime law directly on point. The Fourth Circuit held that there was a federal body of maritime jurisprudence directly on point which expressly preempted any state law on the issue of wrongful termination. Id. at 702-703. In doing so, the Fourth Circuit cited this Court's decision in The Lottawanna for the proposition that uniformity of application throughout the nation is the central purpose of the exclusive jurisdiction of federal admiralty courts. Id. at 702.

The Iowa Supreme Court's decision in this case held that the Fourth Circuit incorrectly

interpreted existing federal maritime law. Is it sound judicial practice for a state court, landlocked in the middle of the United States, to be providing its own interpretation of the important principles of maritime law as governed by the federal courts? The Fourth and Fifth Circuit Courts of Appeal are better able to determine when maritime law has created a substantive principle which must be binding.

Clearly it is a disruption of substantive federal maritime law when states reach rulings contrary to, the decisions of the courts which were given special jurisdiction by the Constitution.

Second, the Iowa Supreme Court improperly interfered with the uniformity of substantive federal maritime law when it recognized a cause of action for wrongful termination that both the Fourth and Fifth Circuit Court of Appeals held did not exist. Meaige v. Hartley Marine Corp., 925 F.2d 700 (4th Cir. 1991), cert. den. 501 U.S. 1217, 111 S. Ct. 2826, 115 L.Ed.2d 996 (1991); Garrie v. James L. Gray, Inc., 912 F.2d 808 (5th Cir. 1990) and Feemster v. BJ-Titan Services Co., 873 F.2d 91 (5th Cir. 1989).

In doing so, the Iowa Supreme Court failed to recognize that these decisions constitute substantive maritime law on the issue of wrongful termination of maritime employees which PREEMPT any state law. See e.g., Meaige.

In addition to failing to recognize the binding effect of the substantive maritime case law, the Iowa Supreme Court also failed to acknowledge Petitioners' argument that 46 U.S.C. § 2114 is the federal maritime statute on wrongful termination which requires that employees first contact the Coast Guard before being entitled to a claim for wrongful termination. Again, this statute constitutes substantive federal maritime law that was disregarded by the Iowa Supreme Court in recognizing the Clements' cause of action.

This Petition for Writ of Certiorari should be granted and the case either summarily reversed or set for plenary consideration.[8]

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[8] Petitioners note that this Court recently granted certiorari in another maritime law case on May 30, 2000. Lewis, James F. v. Lewis & Clark Marine, Inc., Case No. 99-1331 (certiorari granted May 30, 2000). That case also deals with the relationship between maritime and state law. The issues in this case, however, raise an even more important federal question where a state court has attempted to overrule one Federal Court of Appeals decision (Meaige) and ignore two others (Feemster and Garrie).

Respectfully submitted,

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